

STATE OF MICHIGAN
COURT OF APPEALS

In re PLASENCIA, Minors.

UNPUBLISHED
December 15, 2015

No. 327671
Wayne Circuit Court
Family Division
LC No. 14-518191-NA

Before: KRAUSE, P.J., and MARKEY and M. J. KELLY, JJ.

PER CURIAM.

Respondent father appeals by right the trial court's order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i), (g), (j), (k)(ii), and (k)(ix). We affirm the termination of respondent's parental rights but vacate in part the trial court's order to the extent that it purports to also terminate the parental rights of the children's mother.¹

The trial court terminated respondent's parental rights at the initial dispositional hearing based primarily on allegations that he sexually abused his daughter, EP, on multiple occasions over an approximate four-year period, beginning when she was nine years old. EP disclosed the abuse to her mother in October 2014, and EP's mother reported the abuse to the police that same day. Respondent was criminally charged with multiple acts of criminal sexual conduct.

EP testified regarding the multiple acts of sexual abuse at the termination hearing. She described acts involving both sexual conduct and sexual penetration. EP explained that she did not disclose the abuse earlier because she was afraid of how her mother would react and because she was afraid that losing the financial assistance respondent provided to the family would cause the family to lose their home. In addition to the allegations of sexual abuse, other evidence indicated that respondent abused drugs and alcohol and frequently argued with the children's mother in the children's presence. Respondent denied the allegations of sexual abuse but admitted abusing drugs and alcohol and conceded that he needed substance abuse treatment. He

¹ The trial court's order erroneously states that the court also terminated the parental rights of the children's mother. The record discloses that mother was not named as a respondent in this case and that she retained custody of the children throughout the proceedings. Further, after the trial court terminated respondent's parental rights, it ordered the children to remain with mother and then terminated its jurisdiction over the children.

believed that EP fabricated the allegations of sexual abuse after he refused to allow her to go to a party with a friend. The trial court found that EP's testimony credible and justified termination of respondent's parental rights under MCL 712A.19b(3)(b)(i), (g), (j), (k)(ii), and (k)(ix).

I. STATUTORY GROUNDS

Respondent argues that the trial court erred in finding the existence of a statutory ground for termination. We disagree. A petitioner is required to establish at least one statutory ground for termination in MCL 712A.19b(3) by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). This Court reviews the trial court's factual findings, as well as its ultimate decision whether a statutory ground for termination has been proven, for clear error. MCR 3.977(K); MCR 2.613(C). Although there is evidence to support it, a finding is clearly erroneous when this Court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent principally argues that the trial court erred in finding that EP's testimony regarding the ongoing sexual abuse was credible. This Court generally defers to a trial court's assessment of the credibility of the witnesses. *Id.*; MCR 2.613(C). Although respondent contends that there was no medical evidence supporting EP's allegations of sexual penetration, the absence of such evidence did not preclude the trial court from finding EP's testimony credible. We note that respondent's counsel admitted in his closing argument that the evidence of EP's medical examination was inconclusive.

Respondent presents other reasons for discrediting EP's allegations, including that no other family members observed suspicious behavior during the years the abuse allegedly occurred, that EP was not afraid of respondent, that EP disclosed the allegations only after experiencing other problems in the home and after respondent refused to allow her to attend a party with a friend, and that EP claimed that she wrote about the abuse in diaries but then threw the diaries away. These were matters for the trial court to weigh in determining whether EP's account of the sexual abuse was credible. EP testified that the incidents generally occurred when other family members were not home or nearby, or were asleep. Although EP did not claim to be afraid of respondent, she explained that she did not disclose the abuse earlier because she was afraid of how her mother and grandmother would react and because she feared that if respondent were locked up, it would cause financial distress for the family, including the loss of their home. EP stated that she wrote about the abuse in diaries because she wanted to talk to someone about it, but explained that she threw the diaries away so that she could not read them anymore and be reminded of what was in them. Considering EP's testimony and giving deference to the trial court's express determination that EP's testimony was credible, MCR 2.613(C), we find that the trial court's findings regarding the sexual abuse were not clearly erroneous. Those findings support termination of respondent's parental rights under §§ 19b(3)(b)(i), (g), (j), (k)(ii), and (k)(ix).

We disagree with respondent's argument that even if the evidence supported termination of his parental rights to EP, it did not support termination of his parental rights to the other children because there was no evidence that they had ever been harmed or abused. Termination of respondent's parental rights under §§ 19b(3)(k)(ii) and (k)(ix) did not require additional evidence beyond the sexual penetration of a sibling. Under those subsections, the evidence of

respondent's ongoing acts of sexual penetration against EP supported termination of respondent's parental rights to all four children without regard to whether the other children were likely to be abused if returned to respondent's custody. Furthermore, the doctrine of anticipatory neglect or abuse allows a court to find that a parent's conduct toward one child is probative of how that parent will treat other children. *In re HRC*, 286 Mich App 444, 460-461; 781 NW2d 105 (2009); *In re Powers*, 208 Mich App 582, 592-593; 528 NW2d 799 (1995). Evidence also suggested that respondent may have attempted inappropriate contact with two of the younger children, JP and AP, when he asked to shower with eight-year-old JP and unzipped the pants of AP while she was on the couch. This evidence, viewed in conjunction with the evidence of respondent's sexual abuse of EP, suggested that the other children were also at risk in respondent's custody even if they had not yet been sexually abused. Accordingly, the evidence supported termination of respondent's parental rights to all four children.

II. BEST INTERESTS

Respondent also argues that the trial court clearly erred in finding that termination of his parental rights was in the children's best interests. We disagree. MCL 712A.19b(5) provides that "[i]f the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." This Court reviews the trial court's best interest decision for clear error. MCR 3.977(K); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

Whether termination of parental rights is in a child's best interests is determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In deciding whether termination of parental rights is in a child's best interests, the court may consider a variety of relevant factors, including a child's bond to the parent, the parent's parenting abilities, and the children's need for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

Although respondent had been living with the children and their mother for many years and was providing some financial support for the family, the evidence showed that there was not much of a bond between all of the children and respondent. Apart from the sexual abuse of EP, the evidence showed that respondent's long-term abuse of drugs and alcohol had alienated him from the children and caused financial distress for the family. All of the children characterized respondent as a "bad father" and indicated that they did not want to maintain a relationship with him. The trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

We affirm the trial court's order terminating respondent's parental rights, but we vacate the portion of that order that purports to also terminate the children's mother's parental rights.

/s/ Amy Ronayne Krause

/s/ Jane E. Markey

/s/ Michael J. Kelly